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By: Senators Kelley, Stone, Hoffman, Lawlah, McFadden, Kasemeyer, Van Hollen,and Hollinger

Introduced and read first time: January 23, 1996
Assigned to: Budget and Taxation

A BILL ENTITLED

AN ACT concerning

Closing Costs Reduction - Divorced or Widowed Individuals

FOR the purpose of providing for an exemption from the State transfer tax for certain individuals who, after the divorce from or death of a spouse and forat least a certain period of time before settlement, have not owned in the State residential real property that has been the individual's principal residence; authorizing the Mayor and City Council of Baltimore City or the governing body of a county to provide an exemption to the recordation tax or a county transfer taxto individuals who meet the same criteria; requiring the seller to pay for the State transfer tax and, unless there is a certain express agreement otherwise, for the recordation tax and local transfer tax, for certain residential real property sold to those same individuals; making certain stylistic changes; and generally relating to the reduction of certain closing costs for certain divorced or widowed individualswho purchase residential real property.

BY repealing and reenacting, with amendments,
Article - Real Property
Section 14-104
Annotated Code of Maryland
(1988 Replacement Volume and 1995 Supplement)

BY repealing and reenacting, with amendments,
Article - Tax - Property
Section 12-103, 13-203, and 13-409
Annotated Code of Maryland
(1994 Replacement Volume and 1995 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Real Property

14-104.

(a) In this section, "first-time Maryland home buyer" means an individual who:

(1) [has] HAS never owned in the State residential real property that has been the individual's principal residence; OR

(2) AFTER THE DIVORCE FROM OR DEATH OF A SPOUSE AND FOR AT LEAST 5 YEARS BEFORE SETTLEMENT, HAS NOT OWNED IN THE STATE RESIDENTIAL REAL PROPERTY THAT HAS BEEN THE INDIVIDUAL'S PRINCIPAL RESIDENCE.

(b) Except as provided in subsection (c) of this section, in every written or oral agreement for the sale or other disposition of property, it is presumedin the absence of a contrary provision in the agreement or the law, that the parties to the agreement intended that the cost of any recordation tax or any State or local transfer tax shall be shared equally between the grantor and grantee. This section does not apply to mortgages or deeds of trust.

(c) (1) The entire amount of recordation tax and local transfer tax shall be paid by the seller of improved, residential real property that is sold to a first-time Maryland home buyer who will occupy the property as a principal residence, unless there is an express agreement between the parties to the agreement that the recordation tax and local transfer tax will not be paid entirely by the seller.

(2) The entire amount of State transfer tax shall be paid by the seller of improved, residential real property that is sold to a first-time Maryland home buyer who will occupy the property as a principal residence.

(3) This subsection does not apply to tax sales of property under Subtitle 8 of the Property Tax Article.

(4) If there are two or more grantees, this subsection does notapply unless each grantee is a first-time Maryland home buyer or a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in §12-108(i) of the Tax - Property Article for the property and the co-maker or guarantor will not occupy the residence as the co-maker's or guarantor's principal residence.

(5) Paragraphs (1) and (2) of this subsection apply only if each grantee provides a statement that is signed under oath by the grantee stating that:

(i) 1. The grantee is [a first-time Maryland home buyer asdefined under subsection (a) of this section] AN INDIVIDUAL WHO HAS NEVER OWNEDIN THE STATE RESIDENTIAL REAL PROPERTY THAT HAS BEEN THE INDIVIDUAL'S PRINCIPAL RESIDENCE; and

2. The residence will be occupied by the grantee as the grantee's principal residence;

(II) 1. THE GRANTEE IS AN INDIVIDUAL WHO AFTER THE DIVORCE FROM OR DEATH OF A SPOUSE AND FOR AT LEAST 5 YEARS BEFORE SETTLEMENT, HAS NOT OWNED IN THE STATE RESIDENTIAL REAL PROPERTY THAT HAS BEEN THE INDIVIDUAL'S PRINCIPAL RESIDENCE; AND

2. THE RESIDENCE WILL BE OCCUPIED BY THE GRANTEE AS THE GRANTEE'S PRINCIPAL RESIDENCE; or

[(ii)] (III) 1. The grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of the Tax - Property Article for the property; and

2. The grantee will not occupy the residence as the co-maker's or guarantor's principal residence.

Article - Tax - Property

12-103.

(a) The recordation tax rates under this section are applied to each$500 or fraction of $500 of consideration payable or of the principal amount ofthe debt secured for an instrument of writing. The consideration includes the amount of any mortgage or deed of trust assumed by the grantee.

(b) (1) The Mayor and City Council of Baltimore City or the governing body of a county may set, by law, the recordation tax rate in the county.

(2) The Mayor and City Council of Baltimore City or the governing body of a county may provide for an exemption from the tax of a specified amount of the consideration payable on the conveyance of owner-occupied residential property if the buyer intends to use the property as the buyer's principal residence byactually occupying the residence for at least 7 months of a 12-month period.

(3) The governing body of a county or Baltimore City may provide for an exemption from the recordation tax for an instrument of writing for residentially improved owner-occupied real property if the instrument of writing is accompanied by a statement under oath signed by each grantee that:

(i) 1. the grantee is an individual who has never owned inthe State residential real property that has been the individual's principal residence; and

2. the residence will be occupied by the grantee as the grantee's principal residence;

(II) 1. THE GRANTEE IS AN INDIVIDUAL WHO AFTER THE DIVORCE FROM OR DEATH OF A SPOUSE AND FOR AT LEAST 5 YEARS BEFORE SETTLEMENT, HAS NOT OWNED IN THE STATE RESIDENTIAL REAL PROPERTY THAT HAS BEEN THE INDIVIDUAL'S PRINCIPAL RESIDENCE; AND

2. THE RESIDENCE WILL BE OCCUPIED BY THE GRANTEE AS THE GRANTEE'S PRINCIPAL RESIDENCE; or

[(ii)] (III) 1. the grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of this title for the property; and

2. the grantee will not occupy the residence as the co-maker's or guarantor's principal residence.

(c) The recordation tax rate is 55 cents for an instrument of writing for property that:

(1) is located in 2 or more counties; and

(2) is security for a corporate bond of a public utility.

(d) For articles of transfer, articles of merger, or articles of consolidation filed with the Department under § 3-107 of the Corporations and Associations Article, or other document filed with the Department which evidences a merger or consolidation of foreign corporations, foreign limited liability companies, or foreign limited partnerships, the recordation tax rate is $1.65. The Department shall collect the recordation tax when the articles of transfer, articles of merger, articles of consolidation, or other document which evidences a merger or consolidation of foreign corporations, foreign limited liability companies, or foreign limited partnerships are filed.

(e) (1) For a security agreement filed only with the Department under § 9-401(1)(c) of the Commercial Law Article, the recordation tax rate is:

(i) in the case of a single debtor that has a place of business in the State and in the case of multiple debtors all of whom have a principal place of business in the same county in the State, the rate set by the county in which the debtors' principal place of business in the State is located;

(ii) in the case of a single debtor that has no place of business in the State but resides in the State and in the case of multiple debtors noneof whom has a principal place of business in the State but all of whom reside in the same county in the State, the rate set by the county in which the debtors reside; and

(iii) in the case of a single debtor that has no place of business in the State and does not reside in the State and in the case of multiple debtors not covered under subparagraph (i) or (ii) of this paragraph, $1.65.

(2) The Department shall collect the recordation tax when the security agreement is filed.

13-203.

(a) Except as provided in subsection (b) of this section, the rate of the transfer tax is 0.5% of the consideration payable for the instrument of writing. Theconsideration includes the amount of any mortgage or deed of trust assumed by the grantee.

(b) (1) In this subsection, "first-time Maryland home buyer" means an individual who:

(I) has never owned in the State residential real propertythat has been the individual's principal residence; OR

(II) AFTER THE DIVORCE FROM OR DEATH OF A SPOUSE AND FOR AT LEAST 5 YEARS BEFORE SETTLEMENT, HAS NOT OWNED IN THE STATE RESIDENTIAL REAL PROPERTY THAT HAS BEEN THE INDIVIDUAL'S PRINCIPAL RESIDENCE.

(2) If there are two or more grantees, this subsection does notapply unless each grantee is a first-time Maryland home buyer or a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in §12-108(i) of

this article for the property and the co-maker or guarantor will not occupy the residence as the co-maker's or guarantor's principal residence.

(3) Notwithstanding any other provision of law, for a sale of improved residential real property to a first-time Maryland home buyer who will occupy the property as a principal residence, the rate of the transfer tax is 0.25% of the consideration payable for the instrument of writing and the transfer tax shall be paid entirely by the seller.

(4) To qualify for the exemption under paragraph (3) of this subsection, each grantee shall provide a statement that is signed under oath by thegrantee stating that:

(i) 1. the grantee is [a first-time Maryland home buyer asdefined under this subsection] AN INDIVIDUAL WHO HAS NEVER OWNED IN THE STATE RESIDENTIAL REAL PROPERTY THAT HAS BEEN THE INDIVIDUAL'S PRINCIPAL RESIDENCE; and

2. the residence will be occupied by the grantee as the grantee's principal residence;

(II) 1. THE GRANTEE IS AN INDIVIDUAL WHO AFTER THE DIVORCE FROM OR DEATH OF A SPOUSE AND FOR AT LEAST 5 YEARS BEFORE SETTLEMENT, HAS NOT OWNED IN THE STATE RESIDENTIAL REAL PROPERTY THAT HAS BEEN THE INDIVIDUAL'S PRINCIPAL RESIDENCE; AND

2. THE RESIDENCE WILL BE OCCUPIED BY THE GRANTEE AS THE GRANTEE'S PRINCIPAL RESIDENCE; or

[(ii)] (III) 1. the grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of this article for the property; and

2. the grantee will not occupy the residence as the co-maker's or guarantor's principal residence.

13-409.

Any county having a county transfer tax may provide for an exemptionfrom the tax for an instrument of writing for residentially improved owner-occupied real property if the instrument of writing is accompanied by a statement under oath signed by each grantee that:

(1) (i) the grantee is an individual who has never owned in theState residential real property that has been the individual's principal residence; and

(ii) the residence will be occupied by the grantee as the grantee's principal residence;

(2) (I) THE GRANTEE IS AN INDIVIDUAL WHO AFTER THE DIVORCE FROM OR DEATH OF A SPOUSE AND FOR AT LEAST 5 YEARS BEFORE SETTLEMENT, HAS NOT OWNED IN THE STATE RESIDENTIAL REAL PROPERTY THAT HAS BEEN THE INDIVIDUAL'S PRINCIPAL RESIDENCE; AND

(II) THE RESIDENCE WILL BE OCCUPIED BY THE GRANTEE AS THE GRANTEE'S PRINCIPAL RESIDENCE; or

[(2)] (3) (i) the grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of this article for the property; and

(ii) the grantee will not occupy the residence as the co-maker's or guarantor's principal residence.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1996.